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Supreme Court, U.S.
FILED

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No. _____

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**In the**
**SUPREME COURT OF THE UNITED STATES**

October Term, 1996

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Susan V. Klat, *Petitioner*,

*v.*

County of San Diego; San Diego County Board of Supervisors; State of California; Suzanne V. Bemis; and Rhonda A. Dowdy, *Respondents*.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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# PETITION FOR A WRIT OF CERTIORARI

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*Petitioner in Propria Persona*

38 pp

## QUESTIONS PRESENTED FOR REVIEW

1. Whether the Constitutions Eleventh Amendment sovereign immunity clause extends to, and includes, state actions which violate the Constitutions Fourteenth Amendment, section 1, protection and right to due process and equal protection of the law.

2. Whether Title 42 U.S.C. § 1983's sanctioned state immunity exemption status bequeaths to the state, and therefore local municipality, the privilege, protection, and unequivocal right to freely create and perform procedures, policies, customs, and habits that oppose the Constitutions Fifth and Fourteenth Amendments due process and equal protection clause.

3. Whether Title 42 U.S.C. § 1983/state personal injury one year statute of limitations applies and supersedes date of discovery and knowledge of facts as the district court has applied.

## LIST OF PARTIES

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**IN THE SUPREME COURT OF THE UNITED STATES**

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Susan V. Klat, *Petitioner,*
*v.*
County of San Diego; San Diego County
Board of Supervisors; State of California;
Suzanne V. Bemis; and Rhonda A. Dowdy, *Respondents.*

---

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

---

The petitioner, Susan V. Klat, respectfully prays for a writ of certiorari to review the judgments of the United States Court of Appeals for the Ninth Circuit and the United States District Court for the Southern District of California in this case.

## OPINIONS BELOW

The opinions of the court of appeals (App., *infra*, 1a-4a) and of the district court (App., *infra*, 5a-15a) are unreported.

## JURISDICTION

The court of appeals entered its final order dismissing the appeal on February 9, 1996 (App., *infra*, 1a). The entry of judgment affirming the order to dismiss was entered on March 4, 1996 (App., *infra*, 2a).

The district court entered its final judgment dismissing this case on December 11, 1995 (App., *infra*, 15a). No formal entry of judgment as defined by Federal Rules of Civil Procedure, rule 58 (Entry of judgment) has been entered by the district court.

Jurisdiction of this Court is invoked under Title 28 U.S.C. § 1254(1) (Court of appeals; certiorari; certified questions) and the Fifth Amendment to the Constitution of the United States.

## STATEMENT UNDER RULE 29.4(a)

Since this proceeding draws into question the constitutionality of the Act of July 28, 1953, 67 Stat. 226, 28 U.S.C. § 171, an Act of Congress affecting the public interest, and neither the United States nor any agency, officer, or employee thereof is a party to this proceeding, it is noted that 28 U.S.C. § 2403(a) may be applicable.

No court of the United States as defined by U.S.C. § 451 has, pursuant to 28 U.S.C. § 2403(a), certified to the Attorney General the fact that the constitutionality of such Act of Congress has been drawn into question. All parties and all courts are aware, and have been throughout this case, and have refused to comply with this rule.

## STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides, in relevant part, that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 42 U.S.C. § 1983 (Civil action for deprivation of rights) provides, in relevant part, that "every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State of Territory or of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within its jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.* * * "

Title 42 U.S.C. § 1985, (Conspiracy to interfere with civil rights) subdivision 2 (Obstructing justice; intimating party) provides, in relevant part, that "if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any matter, the due course of justice in any state or territory, with intent to deny any citizen the equal protection of the laws, or to injure him and his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal

protection of the laws," and; subdivision 3 (Depriving persons of rights and privileges) whereby "if two or more persons in any State or Territory conspire, * * * for the purposes of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; * * * or in any case conspiracy set forth in this section, if one or more persons engage therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person, property, or deprived of having and exercising any right or privilege of the citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

Title 42 U.S.C. § 1986 (Action for neglect to prevent) provides, in relevant part, that "every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having the power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, * * * for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case."

## STATEMENT

The petitioner Susan V. Klat, proceeding in pro per, sued the respondents County of San Diego, San Diego County Board of Supervisors, State of California, Suzanne V. Bemis, and Rhonda A. Dowdy in September 1995 in the District Court for the Southern District of California after learning that the respondents' fraudulently portrayed and executed guardianship proceedings, not authorized as otherwise conveyed, which violate both the State of California and the United States Constitution and the petitioner's civil rights.

The suit alleges that the respondents' violated the Constitutions Fourteenth Amendment, § 1, due process and equal protection clause when, in 1992-1993, absent state or federal law to support

such, the respondents', acting in concert, fraudulently took custody of the petitioner's daughter without the petitioner's knowledge or consent. This was followed by the portrayal and conveyance, which remains in effect today, that all proceedings completed were legal and were performed in accordance with California law.

Knowledge of the fraud surrounding the proceedings was discovered by the petitioner in April 1995 after the County of San Diego filed suit against the petitioner in the State of California Superior Court for reimbursement of the county funded 1993-1994 child support. An action that California Family Code, § 7505 (When Authority of Parent Ceases) prohibits and which § 4002 (Enforcement of Support) legally forbids.

The respondents', who have since asserted immunity while denying that any wrongful acts were ever committed or illegally performed, all filed motions with the district court to dismiss the complaint. Without hearing oral argument (App., *infra*, 16a) or addressing the attached documents supporting the complaint the district court, through a misleading and clearly conflicting order, unmistakably dismissed the complaint. App., *infra*, 5a-15a. Two months later, and one week after the petitioner's appellant brief was filed, the court of appeals, without affirming the district court's order, dismissed the appeal with an equally confusing order (App., *infra* 1a) that neither court has since been capable of or willing to explain.

Between the time following the release of the district court's order and prior to the Ninth Circuit's dismissal of the petitioner's appeal the County of San Diego illegally litigated, with the appeals court's permission and support, the child support issue which California law (California Code of Civil Procedure, §§ 595-595.1, i.e., Postponement/Proceedings In Court) mandates be postponed until the issues involved are disposed of by the court of the first instance. These proceedings were tried and finalized by superior court within three weeks time and a separate court order was issued that presently allows the county to garnish the petitioner's earnings at twice the rate of what superior court's original child support order allows. In addition, the County of San Diego has continued to bill the petitioner monthly for this support and routinely sends statements accompanied by threats of contempt.

On February 9, 1996, an application for an investigation and intervention was presented to the Honorable Sandra Day O'Connor, Associate Justice for the Supreme Court, and Circuit

Justice for the Ninth Circuit Court of appeals, after the court of appeals denied the petitioner on two separate occasions requests for emergency relief to stop superior court's illegal proceedings. App., *infra*, 3a-4a. The relief requested, which the constitution concedes and federal law dictates be followed, was refused by this Court on February 26, 1996. App., *infra*, 17a.

On March 18, 1996, the application was resubmitted to the Supreme Court and directed to the Honorable William H. Rehnquist, Chief Justice of the Supreme Court, pursuant to Supreme Court Rule 22.5 (Applications to Individual Justices). On April 15, 1996, the Supreme Court affirmed the Ninth Circuit's decision to deny the petitioner due process and equal protection under California law and refused to grant the petitioner her request for a stay to stop the state's unconstitutional acts. App., *infra*, 18a. This Court also refused to investigate these acts pursuant to 28. U.S.C. § 2403(a). In addition, no reason or case law as to why the relief was denied was included in either of the Supreme Court's final orders.

**A. Events Preceding Allegations**

This case originates and encompasses 1992-1993 events which involve guardianship proceedings initiated and authorized without the petitioner's knowledge or consent. In the months preceding the custody dispute, the petitioner's daughter had been reported as missing with local authorities unable to locate the child's whereabouts.

The informal conflict involving custody began in May 1992 when the petitioner, having difficulty containing her teenage daughter's rebellion, decided to send her daughter back to Canada, away from the negative friends and permissive family influence, to live with her uncle. (The child was born in Canada and the child's father also resides there.)

The legal dispute involving custody started three months later, on September 10, 1992, when the respondents Suzanne V. Bemis, who is also the said child's grandmother, and Rhonda A. Dowdy, Bemis's attorney and daughter, petitioned and obtained guardianship of the petitioner's daughter from the state's superior court by prevaricating and concealing essential and necessary facts, which the court later authorized even after the truth was unveiled, including knowledge about the child being listed as

missing, the petitioner's lack of notification or awareness of this hearing, and of the guardianship petition surreptitiously submitted without the petitioner's knowledge or consent. Knowledge of these proceedings followed two weeks later, on September 25, 1992, after this hearing occurred, when a police detective notified the petitioner after the child was found and detained in another state.

Six weeks later, on October 28, 1992, superior court held a hearing to finalize it's proceedings for the appointment of guardianship. However, because the court was not prepared for the petitioner to make an appearance or to challenge the court's unsupported findings and false statement of facts, the court postponed the appointment of guardianship rather than deal with the embarrassment created by the petitioner's protest and lack of consent. Seven weeks later, on December 10, 1992, the appointment of guardianship was finalized by superior court through a fabricated proceeding and documents were created to reflect this phony event. Following this, the court proceeded to authorize the original record to be changed to reflect this bogus hearing and removed all authentic records that incriminated this action and the court. These actions were eventually supported by local, state, and federal authorities, both verbally and in writing, as being proper procedure authorized under California law.

In April 1995 the County of San Diego filed a lawsuit against the petitioner in the County of San Diego Superior Court for reimbursement of the 1993-1994 child support received by the petitioner's daughter after giving birth to her own child in August 1993. It was at this time that the petitioner discovered the State of California's custody requirements, requirements that the respondents' conveyed but did not follow, and which must, by law, be followed before taking or assigning permanent custody or revoking parental rights.

The questions presented here are ones of fundamental importance because they question the legal and constitutional right the state and the district court assert the Constitutions Eleventh Amendment provides to concede or deny, at it's own decreation, the Constitutions Fourteenth Amendment right to due process and equal protection of the law. In addition, it also questions the constitutionality and necessitates clarification by this Court of it's own previously conceded "non person" state status that 42 U.S.C. § 1983 provides, which presently grants to the state a unilateral protection and discretionary option to comply with the

constitution while leaving no avenue for enforcement, correction, or redress when the State deliberately violates the Constitutions Bill of Rights. It also defeats the Constitutions Fifth and Fourteenth Amendments purpose by abrogating the right to due process and equal protection of the law.

**B. Proceedings Below**

On December 11, 1995, the district court announced that it had reviewed the entire record and that oral argument would not be allowed. App., *infra*, 5a,15a. This was followed by the court releasing a confusing but carefully written misleading sixteen page order which unmistakably dismisses the case. App., *infra*, 5a-15a. Prior to this, the respondents' had all filed motions asserting immunity along with a general statement denying the allegations supported in the attached documents accompanying the complaint. Since the Court never really properly addressed these documents it is unknown at this time as to whether any legal authority exists to excuse these purposeful and fraudulent acts.

The district court's order recites that the state cannot be sued for violating the constitution or the petitioner's civil rights. App., *infra*, 8a. It relies on the state's "non person" status under Title 42 U.S.C. § 1983, without addressing the state's guilt, and the Constitutions Eleventh Amendment as the reason why. *Id.* The court of appeals, by dismissing the appeal for perceived lack of jurisdiction, apparently agrees. App., *infra*, 1a.

Jurisdiction of this case is predicated upon Title 28 U.S.C. § 1331 (Federal question), § 1343(a) (Civil rights and elective franchise), Title 42 U.S.C. § 1983 (Civil action for deprivation of rights), and the Fourteenth Amendment, section 1 to the Constitution of the United States.

Jurisdiction of the court of appeals was timely invoked on December 16, 1995. This Court has previously ruled that a decision of a court of appeals dismissing an appeal for want of final judgment under 28 U.S.C. § 1291 (Final decisions of district courts) does not preclude the Supreme Court from granting certiorari if it concludes that the case was properly "in" the court of appeals in the first instance. See *Nixon v. Fitzgerald*, U.S. 731, 742-47 (1982). In addition, as long as the jurisdiction of the court of appeals has been properly invoked and a timely petition for a writ of certiorari is filed, the Supreme Court has jurisdiction to take

the case whatever its status in the lower court. *The Conqueror*, 166 U.S. 110, 113-14 (1987). Although the respondents' actions and replies demonstrate that these proceedings were committed with the intent to deceive and commit fraud, this case clearly exists because the respondents' actions violate the Constitutions Fourteenth Amendment, section 1, due process and equal protection clause.

The remainder of the district court's order is so ridiculously written that it requires this Court to read it because explaining it would only confuse the reader because the order clearly does not make sense. Moreover, the district court's order rewrites the complaint's background while ignoring the complaint's foundation and documented facts. The fact that the district court and the court of appeals believe and provide on a routine basis the state with the authority to override the Constitutions protected Bill of Rights is reason enough to require that this petition be heard.

In addition, since the December 16, 1995, filing of the petitioner's appeal the respondents County of San Diego and the State of California illegally litigated, collected and disposed of the child support issue prohibited by California State law. These proceedings were finalized on January 24, 1996, with the Ninth Circuit's permission and official seal, when the appeals court threatened to sanction and arrest the petitioner, both verbally and in writing, if she dared pursue this appeal or requested any further relief. App., *infra*, 4a. These orders and proceedings are actions that this Court has since sanctioned and approved (App., *infra*, 18a.) with the knowledge that these actions violate the Constitutions Fifth and Fourteenth Amendments due process clause.

## REASONS FOR GRANTING THE PETITION

This case focuses on both the state and the county's inappropriate application and abuse of the Constitutions Eleventh Amendment and misuse of the Title 42 U.S.C. § 1983's immunity and power. Without addressing guilt or the policies involved, the lower courts have allowed the state the right to knowingly practice beyond what the constitutions conceded authority allows. The due process and equal protection clause of the Constitutions Fifth and Fourteenth Amendments speak loud and clear. Neither one makes exceptions or implements allowances, which the district court's

ruling implies, that allows the state the authority and right to practice without redress policies that violate the Constitutions Bill of Rights. This privilege is one that the district court interprets 42 U.S.C. § 1983's immunity to imply, conceived from the district court's interpretation of *Quern v. Jordan*, 440 U.S. 332, 341-342, 99 S.Ct. 1139, 59 L.Ed.2d 348 (1979). In addition, because of the abuse, misunderstanding, and overstepping of the state's perceived power this Court's intervention and direction is required. Moreover, because this abuse is still being practiced consideration of this petition should be granted in an acute and timely manner.

## I. The Lower Court's Interpretation of the Constitutions Eleventh Amendment Is Erroneous and Conflicts With This Court's Interpretation and Previous Rulings.

This Court has previously ruled that a suit challenging constitutionality of a state official's action is not one against the state for the Eleventh Amendment purposes of this amendment. *Pennhurst State School & Hosp. v Halderman*, Pa., (1984) 104 S.Ct. 900. 465 U.S. 89, 79 L.Ed.2d 67. However, this is not what the district court's order dictates, and, this is not what the lower courts combined course of action implies. Moreover, this Court has previously affirmed that a county does not occupy the same position as the state for the purposes of this amendment. *Holly v. Lavine*, C.A.N.Y., (1979) 64 L.Ed.2d 266. (Referring to the 11th Amend.)

One of the basic purposes of the Fourteenth Amendment is to protect an individual against having the government impose burdens on him except in accordance with valid laws of the land. *Giaccio v. State of Pa.*, Pa., (1966) 86 S.Ct. 518, 382 U.S. 399, 15 L.Ed.2d 447. Amend 11 and the principal of state sovereignty which it embodies are necessarily limited by the enforcement provisions of this amendemt . *Fitpatrick v. Bitzer*, Conn., (1976 ) 96 S.Ct. 2666, 427 U.S. 445, 49 L.Ed.2d 614. (Referring to the 14th Amend.) The Constitutions Eleventh Amendment clearly does not abrogate the Constitutions Fourteenth Amendment protection and right to due process and equal protection of the law. However, this is what the district court's order dictates, the appeals court order affirms, and, by allowing the state to ignore the Constitutions Fourteenth Amendment due process and equal protection clause, this Court has authorized.

## II. The Constitutions Fifth and Fourteenth Amendments Due Process Clause Conflicts With Title 42 U.S.C. § 1983's Created State Exemption Status and Abrogates Without Authority the Constitutions Article VI, Section 2 Supremacy Clause.

The Constitutions Fifth and Fourteenth Amendments both recite that no individual shall be deprived of life, liberty, or property without due process of law. However, section 1983's "non person" state exemption status contradicts this statement by simply being allowed. It's practice bequeaths to the state a unilateral protection to perform, whether intentional or otherwise, without consequence, unconstitutional acts. Moreover, because the state is permitted to practice, because it is not a person unlawful and unconstitutional acts, then the state's practice of prosecuting for those same unlawful acts is, in itself, unconstitutional. Without another avenue for correction and redress, the state has demonstrated that no enforcement of the constitution can exist. Allowing section 1983 to provide the state with this invincible shield defeats the Constitutions overall Fifth and Fourteenth Amendments purpose and abrogates, by allowing the state to violate the Constitution, the Constitutions article VI, section 2 supremacy clause.

Moreover, this Court's previous rulings have conferred that Congress may not authorize states to violate this clause [*Shapiro v. Thompson*, Conn., Dist.Col. & Pa., 1969, 89 S.Ct. 1322, 394 U.S. 698, 22 L.Ed.2d 600 (Referring to the 14th Amend., § 1 equal protection clause)], and; that a state has the obligation to insure that actions of it's agencies do not deprive any person of equal protection of the law (*U.S. v. State of Texas*, D.C.Tex. 1970, 321 F.Supp., 1043 supplemented 330 , F.Supp. 235, affirmed 447 F.2d 441, certiorari denied 92 S.Ct. 675, 404 U.S. 1016, 30 L.Ed.2d 663), contradicts what section 1983's sanctioned state immunity allows. With out another avenue for civil rights enforcement and redress this Court cannot authorize, by the United States Constitution and this Court's standards, section 1983's conceded state immunity status.

Accordingly, because the state has abused section 1983's immunity status to practice beyond what the constitutions conceded authority allows, this sections immunity factor must be reevaluated and it's implications and consequences carefully reviewed. Therefore, the Court should grant this petition to correct

and reverse the present day abuse that section 1983's immunity status presently allows.

### III. The Questions Presented Are Important

The Supreme Court's Rule 10(a) (Considerations governing review on certiorari) recites that a petition for a writ of certiorari will only be granted for compelling reasons. The fact that a United States district court entered a decision in conflict with the constitution, and this Court's previous decisions concerning the constitution, should be reason enough for this petition to be heard.

In addition, because both lower courts judicial practices and procedures have so far departed from the acceptable and usual course of judicial proceedings, and have sanctioned such a departure from the usual course of proceedings, it calls for an exercise of this Court's supervisory power.

Moreover, because the questions presented demonstrate importance in terms of the public's interest and concerns the preservation of the Constitutions Bill of Rights this petition should be granted and the issues involved should be addressed and heard. Therefore, the Court should grant this petition.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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*Petitioner in Propria Persona*

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**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

| | | |
|---|---|---|
| SUSAN V. KLAT, | ) | No. 95-56821 |
| | ) | |
| Plaintiff-Appellant, | ) | DC# CV-95-01906-JSR |
| | ) | Southern California |
| vs. | ) | (San Diego) |
| | ) | |
| COUNTY OF SAN DIEGO, et al., | ) | ORDER |
| | ) | |
| Defendants-Appellees. | ) | |
| | ) | |
| | ) | |
| | ) | |

Before: Pregerson, Canby and Hawkins, Circuit Judges

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal in not final or appealable. See *Proud v. United States*, 704 F.2d. 1099 (9th Cir. 1983) (dismissal of complaint with leave to amend is not appealable). Consequently, this appeal is dismissed for lack of jurisdiction.

Filed and entered on February 9, 1996

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**APPENDIX A**

**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

| | | |
|---|---|---|
| SUSAN V. KLAT, | ) | No. 95-56821 |
| | ) | |
| Plaintiff-Appellant | ) | DC# CV-95-01906-JSR |
| | ) | |
| vs. | ) | JUDGMENT |
| COUNTY OF SAN DIEGO; SAN DIEGO COUNTY BOARD OF SUPERVISORS; STATE OF CALIFORNIA; SUZANNE V. BEMIS; RHONDA A. DOWDY; and DOES 1 THROUGH 50, INCLUSIVE | ) | |
| | ) | |
| Defendants-Appellees. | ) | |

APPEAL FROM the United States District Court for the Southern District of California (San Diego).

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the appeal in this cause be, and hereby dismissed.

Filed and entered on March 4, 1996



**APPENDIX A**

**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

| | | |
|---|---|---|
| SUSAN V. KLAT, | ) | No. 95-56821 |
| | ) | |
| Plaintiff-Appellant | ) | DC#CV-95-1906-JSR |
| | ) | Southern California |
| vs. | ) | |
| | ) | |
| COUNTY OF SAN DIEGO, et al., | ) | ORDER |
| | ) | |
| | ) | |
| Defendants-Appellees. | ) | |
| | ) | |
| | ) | |

Before: HALL and BRUNETTI, Circuit Judges

Appellant's motion for a "preliminary injunction" is denied.

Filed and entered on January 23, 1996



**APPENDIX B**

**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

| | | |
|---|---|---|
| SUSAN V. KLAT, | ) | No. 95-56821 |
| | ) | |
| Plaintiff-Appellant, | ) | DC# CV-95-1906-JSR |
| | ) | Southern California |
| vs. | ) | |
| | ) | |
| COUNTY OF SAN DIEGO, et al., | ) | ORDER |
| | ) | |
| Defendants-Appellees. | ) | |
| | ) | |

Before: HALL and BRUNETTI, Circuit Judges

We have reviewed the second motion for injunctive relief received initially on January 12, 1996, and faxed on January 24, 1996 at 12:08 p.m. The motion is denied in its entirety. See *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir), rev'd in part on other grounds, 463 U.S. 1328, 464 U.S. 879 (1983).

No further motions for injunctive relief related to DC# CV-95-1906-JSR will be entertained. Appellant is cautioned that her continued vexatious behavior may result in sanctions and/or notification to the United States Marshal.

Filed and Entered on January 24, 1996


**APPENDIX B**

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF CALIFORNIA**

SUSAN V. KLAT,

Plaintiff,

vs.

COUNTY OF SAN DIEGO; SAN DIEGO COUNTY BOARD OF SUPERVISORS; STATE OF CALIFORNIA; SUZANNE V. BEMIS; AND RHONDA A. DOWDY,

Defendants.

Civil No. 95-1906-R

ORDER DISMISSING COMPLAINT

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This matter is before the Court on motions by Defendants State of California, County of San Diego (also sued as the "San Diego County Board of Supervisors"), and Suzanne V. Bemis and Rhonda A. Dowdy to dismiss the claims brought against them by plaintiff Susan V. Klat. For the reasons discussed below, defendants' motions are GRANTED.[1]

**I. Background**

Klat's complaint stems from a Guardianship Proceeding initiated in September of 1992 in the San Diego County Superior Court Probate Division. In those proceedings. custody of Klat's then 16 year old daughter was awarded to Klat's mother, Bemis, who was represented by Dowdy. Between September of 1992 and December of 1993, Klat alleges various contacts with the Family Court Services Department staff members, as well as hearings before several Superior Court Judges. Between December of 1992

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[1]Pursuant to the local Rules for the Southern District of California, Rule 7.1.d.1, the Court finds this matter appropriate for decision without oral argument.

and March of 1993, Klat corresponded with the California Commission on Judicial Performance and several County Supervisors regarding complaints she had about the judicial process. Between May and December 1993, Klat contacted the American Civil Liberties Union and the United States Justice Department both of whom "refused to assist the plaintiff in any way." The eventual resolution of all those events was that Klat was unsuccessful in regaining legal custody of her daughter.

During this time, Klat's daughter had a daughter of her own. In September of 1993, Klat's daughter applied for public assistance to help support her child. In April 1995, Klat was notified by the District Attorney's Office that the County of San Diego was "suing the plaintiff for child support received by the plaintiff's daughter from September 1993 to whenever the support ceased." See Complaint at ¶ 29. Following the initial notification, Klat received five letters from the County concerning Klat's obligation to pay child support.

On September 5, 1995, Klat filed a complaint in Federal Court against the State of California,[2] the County of San Diego [3] (whom she also sued as the County Board of Supervisors [4]), Rhonda Dowdy and Suzanne Bemis. In the complaint, Klat alleges violation of several federal statutes including 42 U.S.C. § 1983, § 1985, and § 1986. On September 28, 1995, the State of California moved to have the claims dismissed against it, County of San Diego moved to have the claims dismissed against it, and the individual defendants Bemis and Dowdy also moved for dismissal. This Court first examines the federal claims against each of the defendants.

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[2] The complaint indicates that Superior Court Judges Robert C. Thaxton Daniel J. Tobin, and Arthur Jones are being sued as the State of California. They have not been named in their individual capacities and have not been served.

I have known both Judge Thaxton and Judge Jones personally as both lawyers and judges. However, since they are not individual defendants in this matter, and their credibility is not a issue in this motion to dismiss, I do not find recusal is necessary.

[3] In the Complaint, Klat indicates that Dean P. Metzner, Mary Swenson, Murray Bloom, Nellie Penicano, William C. Crews, and Doug Carlson are being sued as the County of San Diego, They are not named as ii individual defendants and have not been served.

[4] The complaint indicates that Brian Bilbray and Pam Slater are being sued as the County Board of Supervisors. They are not named in their individual capacities and have not been served.

## II. Discussion

Klat's complaint contains Eight Causes of Action The First Cause of Action alleges that the County and the State acting under color of law deprived the plaintiff of her equal protection rights and her due process rights. Construing the pleadings liberally, this action must be brought under 42 U.S.C. § 1983. The Second Cause of Action again alleges that the County and the State acting under color of law deprived the plaintiff of her constitutionally protected rights in violation of 42 U.S.C. § 1983. The Third Cause of Action alleges that the County, the State, and individual defendants Bemis and Dowdy conspired to violate and deprive the plaintiff of her constitutionally protected rights in violation of 42 U.S.C. § 1985. The Fourth Cause of action alleges that the County engaged in malicious prosecution of Klat in violation of 42 U.S.C. § 1983. The Fifth Cause of Action alleges that the County failed to prevent the conspiracy alleged on the Third Cause of Action, and such failure to prevent violates 42 U.S.C. § 1986. The Sixth Cause of Action alleges intentional infliction of emotional distress against the State, the County, and Bemis and Dowdy and is based on state law. The Seventh Cause of Action alleged fraud and deceit against the County, the State, and Bemis and Dowdy, in violation of state law. The Eight Cause of Action alleges negligence against the County, the State, and Bemis, and Dowdy and is also based on state law.

Each of the defendants raises several grounds for granting a dismissal of the claims stated against them. The Court will deal with each defendant in turn. The Court will also address the issues which present federal question first.

On a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6), the complaint is construed in the light most favorable to the plaintiff, and its factual allegations are taken as true. *United States v. Gaubert*, 499 U.S. 315, 327, (1991); *McKinney v. De Bord* , 507 F.2d 501, 503 (9th Cir. 1974). Factual or legal conclusions, inferences, or deductions, however, are not given a presumption of truthfulness. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.), cert. denied, 454 U.S. 1031 (1981). In reviewing the complaint, a court should let the claims stand "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45

(1957).

**A. The State of California (First, Second, and Third Causes of Action)**

The State of California has moved to dismiss the claims for failure to state a claim on which relief can be granted. See Fed. R. Civ. P. 12(b)(6). The State argues that it is not a person as contemplated by Title 42, and thus the State is immune from the claims base on violation of Klat's civil rights by virtue of the 11th Amendment. This Court agrees.

According to the Supreme Court, the State is not a proper defendant in a § 1983 action. *Will v Michigan Dep't of State Police*, 491 U.S. 58, 64-66 (1989) (holding state is not a person within the meaning of 42 U.S.C. § 1983). The Ninth Circuit has indicated that the State is not a "person" subject to liability under the Civil Rights Act. See e.g. *Whittier v. Davis*, 410 F.2d 24, 29 (9th Cir. (1969)). Additionally, civil rights claims against the State are barred by the 11th Amendment. *Vaughn v. Regents of the University of California*, 504 F. Supp. 1349 1351-52 (E.D. Cal. 1981) (citing *Quern v. Jordan*, 440 U.S. 332 (1979)).

All claims against the State of California in the First through Fifth Causes of Action are thus dismissed. The plaintiff is not entitled to leave to amend the complaint against the State as the law is very clear, and any amendment would be futile, Accordingly, the claims against the State in the First through Fifth Causes of Action are thus dismissed without leave to amend.

**B. The County of San Diego (First through Fifth Causes of Action)**

Defendant County of San Diego moves to dismiss the claims for failure to state a claim. The County first argues that the claims based on the alleged events that transpired in 1992 and 1993 are barred by the statute of limitations. Next they argue that for the events that transpired in 1995, no actionable conduct has been alleged. This Court agrees that Klat has failed to state a claim based on federal law upon which relief can be granted.

**1. The Pre-1995 Events** [5]

Most of the events alleged in the complaint which are the basis

for this action transpired between fall of 1992 and December 1993. The statute of limitations for § 1983 actions (Klat's First, Second, and Fourth Causes of Action) is determined by the statute of limitations for personal injury in the state where the action is brought. See *Wilson v. Garcia*, 471 U.S. 261, 276 (1985). In California, the statute of limitations for personal injury is one year. See Cal. C. Civ. P. § 340. Therefore, the one year statute of limitations will be applied to the § 1983 claims. *Taylor v. Regents of University of California*, 993 F.2d 710, 711 (9th Cir. 1993), cert. denied, 114 S.Ct. 890 (1994). The date of accrual in a federal civil rights claim is a question of federal law. See *McCoy v. San Francisco*, 14 F.3d 28, 29 (9th Cir. 1994). The date of accrual is "when a plaintiff knows or has reason to know of the injury which is the basis of the action." (citing *Hoesterey v. City of Cathedral City*, 945 F.2d 317, 318-19 (9th Cir. 1991), cert denied, 504 U.S. 910 (1992)).

Here, it is evident from the complaint and the exhibits attached by the plaintiff that Klat had knowledge of all pre-1995 events prior to her asserted date of discovery in April of 1995. Klat's own complaint and exhibits show that back in 1992 during the Court hearings before Judge Thaxton and Judge Tobin, she threatened civil liability when things failed to go her way. See Complaint at ¶ 20. As early as 1992, Klat contacted Henley and Brooks of the California Commission on Judicial Performance to complain about the behavior which is the subject of this action. See Complaint at ¶ 21. In January of 1993, Klat contacted several County Supervisors. Most importantly, Klat was in contact with the ACLU and the Justice Department between May of 1993 and December of 1993 based on the allegations contained in this complaint. See Complaint. ¶ 12-25. There is significant evidence on the face of the complaint and in the exhibits submitted by Klat attached to the Complaint which conclusively establishes that Klat knew of the actions which serve as the basis of her complaint of at the very latest sometime in 1993. Applying the one year statute of

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[5]For the sake of convenience, the Court is using the term "the pre-1995 events" to refer to all the factual allegations stated in the complaint which are the basis of liability. All of the pre-1995 events transpired during either 1992 or 1993. The only event, which is alleged in the complaint which is not included in the category "pre-1995 events" is the 1995 prosecution for child support brought by the County against Klat.

limitations to the time at which Klat knew of the events of which she complains, all events alleged in the complaint prior to 1995 are barred by the statute of limitations. The pre-1995 events cannot be the subject of § 1985 liability because of the statute of limitations[6].

**2. The 1995 Prosecution for Child Support[7]**

The events that transpired from April of 1995 to the present are clearly not barred by the statute of limitations. The County moves to dismiss the claims based on these actions by claiming that Klat has not alleged any actionable conduct. This Court agrees.

The alleged events at issue here are the following:

> In April 1995 the plaintiff was notified by the San Diego County District Attorney's Office, that the County of San Diego is actively suing the plaintiff for the child support received by the plaintiff's daughter from September 1993 to whenever the support ceased.
>
> From April 1995 through August of 1995 the plaintiff received five letters from the County of San Diego threatening to prosecute the plaintiff if she does not cooperate with the County [re: the child support] . . .
>
> In May of 1995 the plaintiff submitted a claim to the San Diego County Board of Supervisors Claims Division twice. The claim was rejected both times on the presumption that they can no longer be held liable for the damages alleged.

See Complaint at ¶ 29-31.

The above allegations do not suggest the deprivation of a constitutional right. To the extent that Klat is trying to state a § 1983 claim for malicious prosecution (the Fourth Cause of Action), the Ninth Circuit has stated that malicious prosecution is generally not cognizable under § 1983. *Bretz v. Kelman*, 773 F.2d 1026, 1031 (9th Cir. 1985) (requiring a showing that prosecutor had intent to deprive plaintiff of equal protection). Even if malicious

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[6]Klat argues that the three year statute of limitations that California applies to claims based on fraud should be applied to her claims. However, as noted above, the Ninth Circuit has clearly indicated that the one year statute of limitations applies to claims based on § 1983.

[7]This section refers to the events alleged in paragraphs 29-31 of the complaint.

prosecution could give rise to a § 1983 claim, Klat has not stated a claim for malicious prosecution. The matter has not been terminated by a ruling on the merits in Klat's favor in the state proceeding. See e.g. *Venegas v. Wagner*, 704 F.2d 1144, 1146 (9th Cir. 1983).

To the extent that Klat is claiming she has been denied due process by the denial of her claims submitted to the Board of Supervisors, the exhibits attached to the complaint conclusively establish that those claims were dismissed as untimely . See Exhibit P of the complaint. the dismissal notified Klat that her "only recourse at this time is to apply without delay to the Board of Supervisors of the County of San Diego for leave to Present a Late Claim." This Klat did not do. The allegations Klat has made do not allege a due process violation on the part of the County and thus fail to allege actionable conduct on the part of the County.

### 3. The Claims under 42 U.S.C. § 1985 and § 1986 (Third and Fifth Causes of Action)

In addition to the § 1983 claims, Klat has also alleged a conspiracy in violation of 42 U.S.C. § 1985 as well as failure to prevent a conspiracy in violation 42 U.S.C. § 1986, The County has moved for dismissal of these claims for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The Court finds dismissal to be appropriate.

The Ninth Circuit has held that in California the statute of limitations for violations of § 1985 is one year. *McDougal v. County of Imperial*, 942 F.2d 668, 670 (9th Cir. 1991). For the reasons discussed above, the Court finds that liability for a conspiracy based on the pre-1995 actions is barred by the statute of limitation. Although no liability can attach for those actions, See *Jones v. Coughlin*, 665 F. Supp. 1040 (S.D.N.Y. 1987), they can still serve as evidence of the alleged conspiracy. However, Klat can only recover for those events that took place within the statute of limitations. *Id*. The Court finds that the post-1995 actions do not support a claim of conspiracy to violate Klat's civil rights. This Court finds that Klat's conclusory allegations of conspiracy unsupported by facts are insufficient to satisfy the pleading requirements of 42 U.S.C. § 1985. *Friedman v. Younger*, 282 F. Supp. 710, 716 (C.D. Cal. 1968) (citing *Harmon v. Superior Court*, 329 F.2d 154, 155 (9th Cir. 1954)). There is no support for the

allegation that the 1995 lawsuit is connected in any way to the 1995 actions, and the allegation of conspiracy must be dismissed. Klat cannot save her claims from the operation of the statute of limitations by alleging that an unrelated event is merely a continuation of an ongoing conspiracy. The post-1995 actions are not actionable in their own right., and can not serve to permit Klat to sue on causes of actions that are barred by the statute of limitations.

Furthermore, the Supreme Court has made it clear that § 1985 was not "intended to apply to all tortious, conspiratorial interference's with the rights of others," but only to those which were founded upon "some racial, or perhaps otherwise class-based, invidiously discriminatory animus." *Griffen v. Breckenridge*, 403 U.S. 88, 101-102 (1971); See, also, *Briley v. State of California*, 564 F.2d 849, 859 (9th Cir. 1977). Here, Klat has failed to allege any such invidiously discriminatory class-based purpose, and it is unclear whether she can make such a allegation. Absent that element, Klat has failed to state a claim under § 1985.

The Ninth Circuit has held that a claim under § 1986 can only be stated if the plaintiff has stated a valid claim under § 1985. See *McCalden v. California Library Association*, 955 F.2d 1214 (9th Cir. 1990). Klat has failed to state a claim for conspiracy under § 1985, so the claims under § 1986 must also be dismissed.

**C. Bemis and Dowdy - (Third Cause of Action)**

The only federal claim brought against Bemis and Dowdy is the Third Cause of Action, for conspiracy to violate Klat's constitutional rights in violation of § 1985. As noted above, the Court need not accept Klat's conclusory allegations as true in evaluating her claim. There is no indication that the post-1995 actions are in any way connected to the pre-1995 actions. Even if the complaint were sufficient to state a claim for conspiracy as to the pre-1995 actions, liability based on those actions is barred by the statute of limitations. For these reasons, and the reasons stated above, the Court finds that Klat has failed to state an actionable claim for conspiracy in violation of § 1985 against either Bemis or Dowdy.[8]

### C. The Causes of Action Based on State Law (Sixth, Seventh, and Eighth Causes of Action)

The Court has dismissed all of Klat's claims based on federal question. The remaining state law causes of action are in this Court pursuant to supplemental jurisdiction. 28 U.S.C. § 1367. Having dismissed all of the actions based on federal question, the sole premise for original jurisdiction over this matter is extinguished. Under these circumstances, the Court may decline to exercise its supplemental jurisdiction over the state law claims. 28 U.S.C. § 1367(c). *United Mine Workers v. Gibbs*, 383 U.S. 715, 725-26 (1966). The Court declines to exercise its supplemental jurisdiction and therefore dismisses the state law claims (Claims Six through Eight) as to all the defendants.

### D. Additional Issues

#### 1. The Propriety of a Motion to Dismiss

In her opposition to the Defendants' Motions to Dismiss, Klat argues that the defendants' "through their motions to dismiss to this court, have in essence violated Federal Rules of Civil Procedures, Rule 8(b) while relying on Rule 12(b)(6)" to avoid answering the complaint. See. e.g., Opposition to County's Motion to Dismiss at 1. Klat repeatedly expresses her desire that Court order the defendants to answer her complaint by addressing the merits of her allegations., rather than by moving to dismiss based on technicalities. However, the Federal Rules of Civil Procedure clearly give the Defendants' the option of pursuing the course they have chosen See Fed. R. Civ. P. 12(b), 12(a)(4). The Defendants' are entitled to have the complaint dismissed for the reasons stated above, the Defendants' need not answer the merits of the complaint.

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[8]Bemis and Dowdy also argue that their actions are shielded by the litigation privilege. Because the Court has found that no claim has been stated against Bemis and Dowdy, there is no need to decide this issue. If Klat amends the complaint the Court will consider the privilege issue at that time.

**2. Bemis and Dowdy's Request For Attorney's Fees**

Bemis and Dowdy have requested attorney's fees pursuant to 42 U.S.C. § 1988. Section 1988 permits a Court, in its discretion, to award attorney's fees to a prevailing party in an action brought pursuant to § 1983, § 1985, or § 1986. They argue that a court should award attorney's fees under this section where the plaintiff's action was "vexatious, frivolous, or brought to embarrass or harass the defendants." The Court finds that the decision rests within the sound decreation of this Court. See 42 U.S.C. § 1988 (discretionary language in statute itself); *Bond v. Keck*, 629 F. Supp. 225, 226-27 (E.D. Mo. 1986) (award of fees to prevailing defendant is a matter within the sound discretion of trail court), aff'd without opinion, 802 F.2d 463 (8th Cir. 1986). Given this discretion, the Court declines to award attorney's fees against Klat, who is proceeding in pro per, and does not have a legal background. The Court based on the record as it now stands does not believe the matter to have been brought solely to harass the defendants', and believes it possible that Klat may have believed that she had a legitimate cause of action. Therefore, the request for attorney's fees is denied.

**E. Leave to Amend**

A court can deny leave to amend when any proposed amendment would be futile." *Reddy v. Litton Industries, Inc.*, 912 F.2d 291, 296 (9th Cir. 1990), cert. denied, 112 S.Ct. 332 (1991). The Court has already held that the dismissal of the claims against the State is without leave to amend. Klat is also unable to remedy her claims brought pursuant to § 1983 which are based on the event that transpired prior to 1995. Klat may be able to amend her § 1983 claim for malicious prosecution if she can allege that their was termination of the state proceedings in her favor,[9] and that the prosecutor had an intent to deprive her of her equal protection rights. Therefore, the dismissal of the Fourth Cause of Action is

[9]The parties are reminded that the Court on a motion to dismiss can take judicial notice of proceedings in state court. In the event that Klat elects to amend her complaint, the Court intends to take such notice of any state court proceedings concerning the alleged malicious prosecution.

with 30 days leave to amend. However, Klat is directed to read Rule 11 of the Federal Rules prior to filing any amended complaint. With respect to her claims under § 1983, Klat's leave to amend is limited to her claim for malicious prosecution.

Concerning Klat's conspiracy claims in her Third Cause of Action., if Klat had specific factual allegations connecting the 1995 prosecution to the earlier events, and is able to successfully state a claim for a § 1983 violation based on malicious prosecution, it is possible that Klat may be able to state a claim under § 1985. However, as noted above, § 19985 requires that there be an invidious class based discriminatory purpose, and Klat has given no indication of such a purpose. Additionally, if Klat is unable to successfully amend her complaint for malicious prosecution, there will be no actionable overt acts within the statute of limitations and Klat will be unable to recover. At this time, the Court cannot find that amendment would be futile, so the Court will give 30 days leave to amend the conspiracy claim. In the event that Klat attempts to amend this claim, she is directed to *Sykes v. State of California*, 497 F.2d 197 (9th Cir. 1974), and reminded of the abomination concerning Rule 11.

**F. Summary**

For the reasons stated above, Klat's First, Second, Third, Fourth, and Fifth Causes of Action are dismissed as to the State without leave to amend. Her First and Second Causes of Action are dismissed as to the County without leave to amend. Her Third, Fourth, and Fifth Causes of Action are dismissed with 30 days leave to amend consistent with this order. Klat's Third Cause of Action against Bemis and Dowdy is also dismissed with 30 days leave to amend consistent with this order. The remaining Causes of Action based on state law are dismissed without prejudice pursuant to 28 U.S.C. § 1367. Bemis and Dowdy's request for Attorney's' fees is DENIED without prejudice.

**III. Conclusion**

For the reasons stated above, Klat's complaint is dismissed. Klat has 30 days leave to amend those claims discussed above. The remaining claims are dismissed without leave to amend.

IT IS SO ORDERED

December 11, 1995

JOHN S. RHOADES, SR.
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF CALIFORNIA**

SUSAN V. KLAT,

Plaintiff,

vs.

COUNTY OF SAN DIEGO; SAN DIEGO COUNTY BOARD OF SUPERVISORS; STATE OF CALIFORNIA; SUZANNE V. BEMIS; and RHONDA A. DOWDY,

Defendants.

Civil No. 95-1906

ORDER WAVING ORAL ARGUMENT; INFORMING PARTIES THAT THEY NEED NOT APPEAR

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This matter is before the Court on three separate motions by the various defendant to dismiss Klat's complaint. Pursuant to Local Rule 71.d.1 of the Local Rules for the Southern District of California, the Court finds this matter to be appropriate for disposition without oral argument. Accordingly, no oral argument will be heard and the parties are instructed that they need not appear Monday December 11, 1995, at 10:30 a.m. in Courtroom Five. A written order will be filed with the Clerk's Office on Monday December 11, 1995, and three copies will be mailed out to the parties from the Clerk's Office at that time or shortly thereafter.

IT IS SO ORDERED:

DATE: 12/6/95

JOHN S. RHOADES, SR.
UNITED STATES DISTRICT JUDGE


**APPENDIX D**

**SUPREME COURT OF THE UNITED STATES**
**OFFICE OF THE CLERK**
**WASHINGTON, D.C. 20543**

WILLIAM K SUTTER
Clerk of the Court

Febuary 26, 1996

Ms. Susan V. Klat
11835 Carmel Mountain Road
Suite 1304
San Diego, CA 92128

Re: Susan Klat
v. San Diego County
Application No. A 705

Dear Ms. Klat:

The application for a stay of mandate or preliminary injunction in the above-entitled case has been presented to Justice O'Connor, who on February 26, 1996, denied the application.

The letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTTER, Clerk

By
Christopher W. Vasil
Deputy Clerk


**APPENDIX E**

**SUPREME COURT OF THE UNITED STATES**
**OFFICE OF THE CLERK**
**WASHINGTON, D.C. 20543**

WILLIAM K SUTTER
Clerk of the Court

April 15, 1996

Ms. Susan V. Klat
11835 Carmel Mountain Road
Suite 1304
San Diego, CA 92128

Re: Susan Klat
v. San Diego County
Application No. A 705

Dear Ms. Klat:

The Court today entered the following order in the above above-entitled case:

"The Application for a stay addressed to the Chief Justice and referred to the Court is denied."

Very truly yours,

WILLIAM K. SUTTER, Clerk

By
Francis J Lorson
Chief Deputy Clerkk


**APPENDIX E**